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15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,
18
19 Plaintiff,

20 vs.

21 STEVEN CARROLL DEMOCKER,
22
23 Defendant.

) No. P1300CR20081339
)
) Div. 6
)
) **REPLY IN SUPPORT OF**
) **SUPPLEMENTAL REQUEST**
) **REGARDING SANCTIONS**
) **BASED ON THE STATE'S**
) **DESTRUCTION OF**
) **BIOLOGICAL EVIDENCE,**
) **FALSE REPORTING OF**
) **BIOLOGICAL EVIDENCE**
) **RESULTS AND DEFIANCE OF**
) **COURT ORDERS**
)
)
)

24
25 **REPLY**

26 The State's response ignores that it was the Court that raised the issue of
27 economic sanctions after finding that the State violated both this Court's orders and
28 Rule 15.1 and precluded the use of evidence relating to undisclosed consumptive

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 JUN 23 PM 3:28 ✓

JEANNE HICKS, CLERK

BY: S. Bagnall

1 forensic testing. While the State calls the proposal for the payment of Dr. Rudin's fee's
2 "shameless[]" it was again the Court that specifically requested that the defense
3 "provide the Court with information regarding the Defense expert's expense involved in
4 going to Sorenson and being present for the testing." May 11, 2010, Minute Entry. The
5 only shameless behavior is the State's attempt to further distort the record and avoid
6 proper sanctions for its repeated and blatant violations of the Court's orders. This Court
7 should award costs and expenses as requested by the defense.

8 The State does not deny, because it cannot, that its violations as found by the
9 Court include not only unnoticed consumptive testing but also inaccurate reporting of
10 DNA results on a critical item of exculpatory evidence as well as the State's decision to
11 wait to test critical evidence items for 20 months, even though such testing was advised
12 by DPS in August of 2008. The inaccurate report purported to convey a scientific
13 conclusion that Steven DeMocker might possibly have been a contributor to DNA found
14 under the fingernails of the left hand of the victim. When the inaccuracy of the report
15 on this critical issue was brought to the attention of the Sorenson Laboratory witness,
16 the witness chose to describe her error as a "typographical" error. It was not until the
17 very recent telephonic re-interview of Sorenson's Technical Director (Mr. Dan Hellwig)
18 that the State's expert came to describe the error as an analytical and not a typographical
19 error. The State is certainly aware of the importance of the discovery of this error. In
20 virtually every set of questions asked during the several weeks individual voir dire, the
21 State has acknowledged that there was DNA under the victim's fingernails and that the
22 DNA does not match Steven DeMocker.

23 This was one of three issues that resulted in the sanction request. The amount of
24 attorney time requested as a sanction for these violations directly relates to addressing
25 all three of these issues: the false reporting of DNA results by Sorenson; the State's
26 decision to wait for 20 months to perform YSTR testing on items of evidence; and the
27

1 State's consumption and failure to notice the defense of testing in violation of the
2 Court's order. While the State contends that it did not "hide the ball" from the defense
3 about this testing (response at 6), it does not deny that Sorenson Labs did consumptive
4 testing without providing the Court ordered notice to the defense. Nor does it deny that
5 the consumptive swabbing was done while Dr. Rudin was present at Sorenson, but
6 somehow, inexplicably, outside of her presence and with the express consent of the
7 Yavapai County Attorney.

8 The State's misconduct did not simply require, as the State suggests, "15
9 minutes to one-half hour time" as the State well knows. Discovering, researching and
10 correcting these violations required multiple reviews of hundreds of pages of late
11 disclosed forensic reports and electropherograms with experts, multiple interviews with
12 multiple Sorenson employees and the writing and defending of multiple motions. The
13 State, ironically citing in the same motion to a definition of "good faith", makes the
14 totally irrelevant and unfounded assertion that "it is believed that the taxpayers of
15 Yavapai County are paying defense attorney fees." The State provides no basis for this
16 assertion, nor any indication of why it would be relevant to the consideration of whether
17 counsel should be reimbursed for the time required to respond to the State's violations.
18 We will address this issue as appropriate in an *ex parte* under seal response.

19 The State has no principled ability to contest the amount of sanction sought for
20 counsel to discover and address the State's misconduct. The Court took economic
21 sanctions under advisement and the defense has now provided the Court with the
22 amount of time required of both counsel and Dr. Rudin to address these issues. Counsel
23 kept track of time as it was being expended and detailed the tasks accomplished. The
24 Court should order these economic sanctions as requested.

25 Counsel hereby request that this Court order the State to reimburse the costs, fees
26 and expenses and for Dr. Rudin, Mr. Hammond and Ms. Chapman's as sanctions for the
27
28

1 State's violations. We leave to the discretion of this Court the setting of the precise
2 amount, and we have provided in our Motion several parameters that we hope are useful
3 to the Court.

4
5 DATED this 23rd day of June, 2010.

6
7 By: 

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15 **ORIGINAL** of the foregoing sent via
16 hand delivery for filing this 23rd day
17 of June, 2010, to:

18 Jeanne Hicks
19 Clerk of the Court
20 Yavapai County Superior Court
120 S. Cortez
Prescott, AZ 86303

21 **COPIES** of the foregoing hand delivered this 23rd day of June, 2010, to:

22 The Hon. Thomas B. Lindberg
23 Judge of the Superior Court
24 Division Six
120 S. Cortez
25 Prescott, AZ 86303

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